

UTAH SCHOOL LAW UPDATE

You Have the Right to Mess Up

The federal Equal Employment Opportunity Commission has issued new guidelines to further clarify existing laws on employment discrimination.

Part of those guidelines, which can be found at http://www.eeoc.gov/ policy/docs/racecolor.html and a O & A about the same issue can be found at: http:// www.eeoc.gov/policy/ docs/ qanda_race_ color.html, may require some districts to rethink their hiring policies regarding the results of criminal background checks.

Utah law requires that educators, or anyone with "significant unsupervised access" to students have a criminal background check. The law does not, however, bar anyone with

an arrest record from employment in the public schools.

The EEOC suggests that adopting a policy that would bar someone with an arrest record from working in the district could be discrimina-

The Q&A developed by the EEOC notes that using an arrest or conviction record as an absolute bar will disproportionately exclude certain racial groups from employment. While the policy may be neutral on its face, the effect violates federal law.

Schools can, of course, bar individuals from employment with convictions or arrests, but must do so after considering not just the fact that an arrest or conviction happened, but also

what the charges were, how long ago the arrest occurred, and the nature of the job the applicant is seeking.

A person applying for a driver education position can, of course, be excluded from the applicant pool if he or she has a recent DUI arrest.

It would be much more difficult, however, to bar that person from a job as a school custodian.

The EEOC also notes that an arrest is not evidence that the person committed a crime. We advise that applicants should not be absolutely barred from employment based on arrests, particularly if the arrests are old and unrelated to the job, or there is no other evidence that the person actually engaged in the acts she was arrested for.

Utah State Office of Education

June 2006

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Please note: We will not publish in July. See you in August!

UPPAC CASES

- The Utah State Board of Education revoked the license of Melinda Lee Blodgett Deluca. Ms. Deluca engaged in sexual activity with a student and provided drugs and alcohol to students.
- The State Board revoked the license of Colby Reed Rowley. Mr. Rowley was convicted of third degree felony theft for stealing money from his nonschool employer.
- The Board accepted a Stipulated Agreement for an 18month suspension of Wally F. Cowan's license. The suspension results from Mr. Cowan's possession of sexually-oriented materials in his classroom at a high school.
- The Board accepted a Stipulated Agreement for a 2 year suspension of Robert Charles Zancanella's license following his plea to misdemeanor attempted child abuse.
- The Board agreed to an 18 month suspension of Norman James Parker's license for unprofessional email conversations with a female student.

UPPAC Case of the Month

Schools and districts are becoming increasingly concerned about their students use of the popular Internet site Myspace.com. But student use is not the only con-

Schools can learn a lot, not all of it professional, about their teachers on Myspace as well.

Myspace enables an individual to set up a "profile" of herself, including public and

"private" spaces. In the public realm, the individual can include as much or as little information about herself as she pleases. The user can update information at will and establish her own blog to share her every random thought, if she chooses, with myriad strangers and friends.

Other myspace users can also post comments to

the profile site. Those comments can be viewed in the public section. A viewer can also click on the picture of the person who posted a comment and check out that person's Myspace profile.

The "private" section can include pictures, videos and past comments posted by others, among other options. This section is

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Eye On Legislation and Law

Utah is one of the most lenient states in its requirements for home schooling. Vermont, seeking to emulate Utah, has decided to reduce its requirements, which will still be far above Utah's minimalist approach.

Currently, Vermont requires that home school parents submit a curriculum plan each year for each child they teach at home. The plan is not only submitted to the school board, it must also be approved by the state department of education.

At the end of the year, teachers of home school students are held accountable for the plan. The student must pass a standardized test or submit a portfolio of work completed under the curriculum

plan for review by another teacher to determine of the plan was successful.

Vermont will relax this process, by allowing parents to skip the annual plan requirement if the student has demonstrated adequate yearly progress on standardized tests or through the portfolio for two years. Burlington Free Press.

Utah requires no accountability from teachers of home schooled students.

A Massachusetts school board has taken a page from the Utah State Board of Education, much to the consternation of Massachusetts Governor Mitt Romney. The New Bedford school system announced it would award diplomas to students who do not pass Massachusetts'

> graduation exam, but meet all other graduation require-

Gov. Romney asked the State Board of Education to withhold school funding for the system until it agrees to continue awarding

"certificates of attainment" for those who don't pass the MCAS exam. The certificates are not considered diplomas.

New Bedford Mayor Scott Lang stated that the decision to award diplomas reflects the concerns of the town about dropout rates, unemployment and MCAS passing rates.

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Recent Education Cases

Goins v. Rome City School Dist., (N.Y. App. Div 2006). A parent sued the district for alleged FERPA violations and extreme emotional distress. She claimed that her FERPA rights were violated when the school instructed her daughter to participate in a "trucker buddy" program as part of a school geography project.

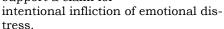
The program provided student names and a group photo to truck drivers who would then correspond with the students through the school

The mother's distress over the pro-

gram was the sole source of her emotional turmoil.

The court ruled that FERPA does not give an individual

any right to sue. Further, the mother's angst about the program was not enough support a claim for



Bajjani v. Gwinnett County School Dist., (Ga. App. 2006). Parents sued the school district over its perceived

policy of discouraging schools from making required reports of violent incidents, exacerbating injuries their son received in a fight.

During class, a student threatened to beat the son, Timothy, after he responded to the student's question in an inflammatory way. The teacher heard the threat but took no action.

After class, the student severely beat Timothy, leaving him bleeding, vomiting and unable to remember what had happened to him.

The principal and assistant principal (Continued on page 3)

UPPAC cases cont.

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"private" only in the sense that it can only be accessed by other

Myspace users. Becoming a Myspace user is free and simple.

Educators, like anyone else, can set up a Myspace profile and enjoy the benfits of public disclosure of

But educators must always re-

member that they are role models for their students and their students

should not be able to view information about the educator that would negatively impact the person's ability

to function as an effective educator and role model.

For instance, a school or student might discover that a teacher is involved in sexual relationships with several individuals. Or that a teacher is a heavy drinker or a

their personal interests to the world. drug user based on comments or pictures/images posted to Myspace from the teacher or other individuals. Or the student may learn about the educator's personal views of others stu-

dents.

While educators have every right to set up a Myspace profile, a district also has every right to discipline a teacher whose Myspace postings would cause the reasonable parent or student to question the educator's ability to teach students socially responsible conduct by personal example.

Professional educators realize that professional boundaries and demeanor must be maintained, whether in the classroom or in cyberspace.

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Eye on Legislation (Cont.)

(Continued from page 2)

A legislator representing New Bedford intends to offer legislation creating the kind of diploma the school system hopes to award to its students.

The State Board of Education in Massachusetts, meanwhile, is debating whether to raise the cut scores on MCAS, and has indicated it is not likely to support the new diploma idea. *Boston Globe*.

For those who think classroom teachers are the only ones who get into trouble, a former state superintendent in Georgia pled guilty to charges of fraud and money laundering.

Linda Schrenko was superintendent from 1995-2003. She

was accused of using \$600,000 of federal education money to finance her unsuccessful campaign for the Republican gubernatorial nomination in 2002.

Atlanta Journal-Constitution.

Utah is also not the only state with massive "education reform" bills running through its legislature. The Florida Legislature recently passed a broad-based education bill reflecting its views on reform.

The bill allows high school stu-

dents to select majors and minors, establishes a fall school starting date and adds an extra year of math to state requirements.

The Florida legislature was not able to pass Governor Jeb Bush's latest voucher proposal. The governor sought to put a constitutional amendment enabling the state to enact vouchers on the Nov. ballot. The Florida Supreme Court has struck down the state's voucher program based on language in the state's Constitution. *Orlando Sentinel* and *Miami Herald*.

Your Questions

Q: If the school has reason to believe a student is using a cell phone (which is not supposed to be out at school) to arrange with other students to skip school, can the school confiscate the phone to determine if the rumor is true and who else might be involved or would that be an invasion of student privacy?

A: A student has a reasonable expectation of privacy in his or her cell phone, provided the school allows students to have phones on campus. However, as with any

What do you do when. . . ?

search, if school administrators have a **reasonable belief** that the student is engaged in conduct that would violate school rules or cause harm to the student or others, and the phone may hold evidence, the administrators can confiscate the phone, just as they would confiscate a purse of backpack if there were

reason to believe the student was carrying contraband.

The Utah Wiretap statute also comes into play with a cell phone, however. The statute prohibits an individual from accessing stored information, such as voice mail, unless he or she is the intended recipient of the voice mail, or there is reason to suspect criminal activity.

This prohibition may not extend to the call log of phones. Courts that

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Recent Cases Cont.

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found Timothy and took him to the school nurse. She cleaned him up while the principal called the parents, telling them Timothy was alright, but he needed to see them.

When the mother arrived, 40 minutes later, Timothy was worse. She demanded that the school call 911 and Timothy was finally treated for severe head trauma, a subdural hematoma, temporal skull fracture and three facial fractures an hour and a half after the attack.

The parents were able to show that the district repeatedly and grossly underreported violent incidents at the



school to avoid being designated as "persistently dangerous" under No Child Left Behind. The court noted that in 2002 the

school reported 4,258 of the 70,138 disciplinary incidents that occurred.

The parents also showed that teachers at Timothy's school had been instructed never to call 911 for an injury on school grounds.

The court was understandably unimpressed with these policies and ruled that the parents could proceed to trial on their claims that the school and district lost their governmental immunity protection based on their willful and malicious acts.

A.M.P. v. Florida, (Fla. App. 2006). The student sued after she was adjudicated as a delinquent for lightly but intentionally bumping an administrator.

The administrator had broken up a hair pulling fight between A.M.P. and another girl. The student challenged the adjudication and was vindicated by the court which found that a fight in the girls' bathroom is not evidence of an "intent to disrupt the functioning of an educational institution," as required by the delinquency statute.

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Utah State Office of Education

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3)

have addressed this issue, most notably in the Third Circuit, have excluded logs of calls made and received from other states' wiretap statutes.

Text messages are more complicated. Texts are communications under wiretap statutes and a school should not randomly sort through a student's text messages without a reasonable suspicion of unlawful activity.

Whether the school can also listen to voice mails or read text messages based on a suspicion a student has broken school rules is also still in question. State wiretap laws deal only with criminal conduct but some courts have expressed a willingness to allow parents, and those acting *in loco parentis* leeway in this regard. The 10th Circuit has not yet addressed this specific issue, nor has the Utah Supreme Court.

Q: If a parent requests salary information, resumes and "all documents relating to performance" of a particular teacher, or even all teachers in the school, what do we do?

A: Individual salaries and qualifications for the person's position are public information that must be

disclosed, if requested. Performance evaluations, on the other hand, are not public.

The Utah Government Records Access and Management Act gives a public agency, such

as a school, district, or charter school, ten days to respond in writing to a request for government records.

That response may be providing

the public records, denying the person access to the records because the records are not public, informing the requesting person that the agency needs more time to compile the records or the agency no longer has the records (please do not destroy records after a request comes in), or a combination of any of the above.

The school can charge a reasonable fee to comply with the request. Reasonable means the actual costs of copying the materials, including staff time used to do so.

If the school denies access to the records, the requesting person can appeal that decision.